

WORKING GROUP 2

PROPOSAL FOR REPORT TO CODESA 2

1. Basic approach: Constitution making within the framework of a Transitional/Interim Constitution.
 - 1.1 Codesa shall agree to and draft a transitional/interim constitution. This constitution shall be submitted to parliament for legislation.
 - 1.2 The transitional/interim constitution shall make provision for the basic elements of a democratic constitution as well as for the constitution making process through which and the constitution making body by whom a final constitution shall be drafted and adopted. Constitutionally there will therefore be three phases:
 - i) The present constitution as set out in the Republic of South Africa ACT 1983 and other constitutional legislation pertaining inter alia to the self-governing territories and TBVC States;
 - ii) The transitional/interim constitution drafted by Codesa and legislated by the present Parliament;
 - iii) A final constitution drafted and adopted in terms of the provision of the transitional/interim constitution.
 - 1.3 The transitional/interim constitution and the final constitution will each contain the necessary transitional provisions to ensure that there is no legal, administrative or constitutional hiatus between the three phases and may therefore include provisions regarding the phasing in of the one and phasing out of the other.
2. The process of drafting a Transitional/interim constitution: the role of Codesa
 - 2.1 Codesa may agree to set up for the purpose of drafting a transitional constitution such committees of commissions as it may deem fit.
 - 2.2 Codesa shall consult governments of the self governing states and may also consult other interested parties.

3. The content of the Transitional/Interim Constitution

The transitional/interim constitution shall make provision, inter alia, for the following:

3.1 A Legislature

The legislative authority shall vest in a democratically elected interim/transitional parliament consisting of a National Assembly and a Senate functioning in terms of the special majorities and general constitutional principles agreed upon.

3.1.1 The structure and role of the Senate must still be agreed upon.

3.1.2 The National Assembly shall be elected on the basis of proportional representation and universal adult suffrage according to a system that will ensure proper representation of regions and regionally based parties.

3.2 Provisions regarding the drafting and adoption of a final Constitution

3.2.1 The final constitution for South Africa shall be drawn up by the National Assembly in terms of the procedures set out in the following paragraphs:

3.2.2 Subject to the provisions of paragraph 3.2.3 every clause in the final constitution shall be adopted by a majority of 75% in the National Assembly.

3.2.3 Provisions in the final constitution affecting regional government as set out in paragraph 3.6 and the distribution of power between central regional and local levels of government shall in addition to general special majorities referred to in paragraph 3.2.2 also require a special majority of the regional representatives in the National Assembly such special majority to be agreed upon by Codesa.

3.2.4 The final constitution shall be adopted at a joint session of the two Houses of Parliament.

3.3 An Executive

3.3.1 Executive authority shall vest in a multiparty transitional/interim executive in accordance with the principle of a government of national unity.

3.3.2 The composition functions and procedures of the transitional/interim executive must still be agreed upon by Codesa.

3.4 The separation of powers

There shall be a separation of powers between the executive, legislature and judiciary according to the principles underlying a constitutional state.

3.5 Fundamental Rights

Codesa shall agree on a justiciable Charter of Fundamental Rights which shall form part of and shall be entrenched in the transitional/interim constitution.

3.6 Regional Government

3.6.1 Codesa shall agree on the boundaries, powers, duties and functions of regional governments.

3.6.2 Provision shall be made for regional government and/or the phasing in of such government with the boundaries, powers, duties and functions as referred to in paragraph 3.6.1.

3.6.3 The transitional/interim constitution shall entrench regional government and its boundaries, powers, duties and functions in the transitional phase and the transitional/interim constitution shall in this regard not be amended without the agreement of all the parties in the National Assembly.

3.7 Provisions regarding amendments to the transitional/interim constitution.

3.7.1 No amendment shall be of any force and effect if it is contradictory to the set of constitutional principles set out in paragraph 3.8.1.

3.7.2 Save as is stated in paragraph 3.6.3 any amendment to the transitional/interim constitution will require a special majority of 75% in the National Assembly.

3.8 Provisions regarding a set of constitutional principles

3.8.1 Codesa shall agree on a set of general constitutional principles to be enshrined in the final constitution and which shall not be contradicted by any provision of the final constitution.

3.8.2 The transitional/interim constitution shall contain an entrenched provision prescribing that the final constitution shall give effect to paragraph 3.8.1 and shall establish an independent mechanism which will be the only body to determine that the general constitutional principles have been enshrined and not contradicted in the final constitution, which determination may only be initiated by a party in the National Assembly.

4. Special mechanisms

4.1 Codesa shall agree upon special mechanisms to ensure that the National Assembly completes the work of drafting and adopting the final constitution within a specified period of time. The transitional/interim constitution shall remain in force until replaced by the final constitution.